



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable V. B. Goar
County Attorney
Blanco County
Johnson City, Texas

Dear Sir:

Opinion No. 0-5684

Re: Under the given facts who
has the preferential right
to use or record the mark
in question?

You have requested the opinion of this department
upon the following:

"(A) recorded a mark in 1877 in Blanco County Clerk's Office. (B) recorded the same brand in 1900. (C), a son of (A), upon the death of (A) recorded the same mark in 1913. Question: Now, who has the preferential right, (B) or (C)?"

In other words, you would like to know our opinion as to whom, under the above facts, has the preferential right to re-record the mark in question under Article 6899, Vernon's Texas Civil Statutes.

Article 6899 provides for the re-recording of marks and brands and gives the legal owner of a brand or mark a preferential right to record such brand or mark for a period of two years from the 1st day of October, 1943. Article 6897, Vernon's Annotated Civil Statutes, in effect provides that if a dispute arises about a mark or brand, the one of the oldest date as appears on the record book has preference. Therefore, under Article 6899, if a dispute arises as to who has the preferential right to record a mark, this preference belongs to the person who has had the particular mark on record the longest.

Marks and brands are personal property and are subject to be sold or inherited. Rankin v. Bell, 85 Tex. 28, 19 S. W. 874; Ledbetter v. State, 35 Tex. Cr. R. 195, 32 S. W. 903; Dugat v. State, 67 Tex. Cr. R. 46, 148 S. W. 789.

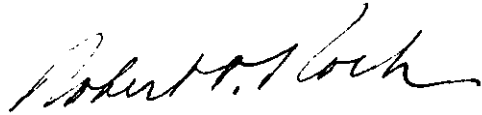
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It is also permissible for an individual to change or abandon a recorded mark or brand. *McClure v. Sheek's Heirs*, 68 Tex. 426, 43 W. 552; *Dugat v. State*, *supra*.

Therefore, under the given facts, if (A) had not abandoned or changed the mark in question at the time of his death, and (C) can show he is the devisee or did inherit this mark, then it is our opinion that (C) has the preferential right to record this brand under Article 6899. If these facts cannot be shown, then (B) in our opinion possesses this preferential right.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By 

Robert O. Koch
Assistant


ROK:db

